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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **FAO(OS) NOS. 470-471 OF 2006**

% **Date of Decision** : 4th May, 2007.

SHRI HARBANS LAL KHULLAR & ANR. .... Appellants.
Through Mr. Rakesh Khanna, Sr. Advocate
with Mr.Gurvinder Pal Singh, advocate.

VERSUS

SMT.DOLLY KAPOOR & ORS. .... Respondents.
Through Mr.R.K.Jain, Mr.Vikas Chadha, Mr.R.K. Gupta, advocates for respondents 1-3.
Mr. Raj Kishore Gupta & Mr.Ruchir Gupta, advocates for respondents 4 and 6.

CORAM:

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J:

1. The present appeals by Shri Harbans Lal Khullar and Smt. Kiran Khullar are directed against the Order dated 1st May, 2006 passed by the learned Single Judge whereby the defence of the appellants was struck off due to non-compliance of the Order dated 4th October, 2005.
2. The appellants herein are the defendants 1-2 in CS(OS) No. 1633/2005 which has been filed by Ms. Dolly Kapoor.
3. The said Suit has been filed for partition, rendition of account and injunction in respect of the estate left behind by one Smt. Arsha Verma, who expired on 24th June, 2000. The appellants and the respondent in the present appeals claim legal title/right in her estate or in dealing with the same.
4. By Order dated 19th April, 2005 passed in I.A. No.1452/2005, a statement was made by learned counsel for the appellants/defendants 1-2 that the said defendants were ready and willing to place on record the photocopies of passbooks of joint accounts of the deceased with the said defendants/appellants, from which position with regard to the deposits and withdrawals

would become clear. It was further stated that the appellants-defendants 1-2 had not made any withdrawals from the joint accounts except one withdrawal of about approximately Rs.25,000/-.

5. We have examined the records and find that on 2nd August, 2005 the appellants-defendants 1-2 had furnished details of 21 bank accounts/FDRs along with a list. Photocopy of the FDRs and bank statements were enclosed.

6. On 27th September, 2005 statement was made by learned counsel for the appellants-defendants 1-2 that in compliance with the order, statements of accounts had been filed. This was however disputed by the plaintiff-respondent who had appeared in person and stated that complete details of accounts had not been filed. Liberty was granted to the parties to file an application.

7. Thereafter, IA.No.7944/2005 was filed. Learned counsel for the appellants-defendants 1-2 appeared on 4th October, 2005 and made a statement that he would file an affidavit giving complete details and statements of accounts of the deceased. On the basis

of this statement, the application was disposed of. However, the affidavit came to be filed only on 17th March, 2006. In this affidavit, the appellant-defendant no.2 stated that she had already placed on record list of FDRs, bank accounts held in joint name along with the deceased and no other information regarding any account of her sister was available with her. Along with this affidavit, the appellant-defendant no.2 had also enclosed copy of return filed by the deceased with details for the Assessment Year 2000-2001.

8. Learned Single Judge by the impugned Order dated 1st May, 2006 has held that the affidavit filed was not in terms of the statement made on 4th October, 2005 and struck of the defence of defendants 1-2/appellants herein. Thereafter, certain other directions for partition of the properties were also issued.

9. The affidavit filed by the appellant-defendant no.2 on 17th March, 2006 should have been a detailed affidavit setting out complete details and particulars of all the bank accounts, FDRs, etc. Even if the appellant-defendant no.2 had already furnished details and photocopies of the said FDRs and bank accounts, the same should

have been duly incorporated in the affidavit on oath. Affidavit by the appellant-defendant no.2 was required so that she could be bound by the details furnished by her in form of a list on 2nd August, 2005. However, one cannot lose sight of the fact that the appellant-defendant no.2 has stated in the affidavit that the details of FDR/bank accounts had already been placed on record on 2nd August, 2005 and the deponent, i.e. appellant-defendant no.2 did not have any other information regarding the accounts of her deceased sister available with her. Thus, no further details of any other accounts, FDRs were furnished.

10. We also find that the appellant-defendant no.2 had not furnished or given the details in the affidavit, of any withdrawals made by her after 2000.

11. The Suit as such is at initial stage and photocopies of FDRs and bank accounts as well as affidavit was filed by the appellant. In order to do complete justice, we grant the appellants-defendant no.2's and one further opportunity to file a detailed affidavit on oath clearly stating:

(i) Full details of the joint accounts and FDRs held by the deceased, Smt. Arsha Verma either individually or jointly with the said defendants along with the bank balance at the time of her death;

(ii) Details of all withdrawals from the said bank accounts and FDRs from the year 2000 onwards;

(iii) Details of rent received along with the bank account in which rent has been deposited from the date of death of Smt. Arsha Verma. Details of other income from the investments made by late Arsha Verma along with bank account in which the said income has been deposited.

(iv) Appellants-defendant nos.1&2 will also clearly state whether they have any knowledge or information of any other movable assets left behind by Smt. Arsha Verma, which may be in their possession or in possession of third parties.

12. The aforesaid affidavit will be filed within three weeks from the

date of this Order. The appellant-defendant nos.1 and 2 will also be liable to pay costs for having delayed the proceedings. Keeping in view the value of the assets and the delay caused, costs are assessed at Rs.25,000/- to be paid by the appellants to the respondent-plaintiff through counsel within three weeks. With the aforesaid directions, and subject to compliance within the stipulated period, the appeals are disposed off. On compliance being made within the time period, the impugned order striking off the defence of the appellant-defendants shall be set aside.

13. Suit is already listed before the learned Single Judge on 10th July, 2007.

(SANJIV KHANNA)
JUDGE

(DR. MUKUNDAKAM SHARMA)
CHIEF JUSTICE

MAY 04, 2007
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